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Newport, R.I.**

**ARMED CARTEL INCURSIONS FROM MEXICO: BEST OPTIONS FOR  
PREVENTION AND RESPONSE**

**by**

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**A paper submitted to the Faculty of the Naval War College in partial satisfaction of the requirements of the Department of Joint Military Operations.**

**The contents of this paper reflect my own personal views and are not necessarily endorsed by the Naval War College or the Department of the Navy.**

**Signature: \_\_\_\_\_**

**May 4, 2009**

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## **Abstract**

### *Armed Cartel Incursions From Mexico: Best Options for Prevention and Response*

As violence continues to increase in Mexico, and the value of supply lines between the U.S. and Mexico increase in importance to drug cartels, the need for a plan to deal with these groups forcing their way into the U.S. increases. The only entity able to match weapons and tactics with the former special-forces members of several cartel private armies is the Department of Defense. The purpose of this paper is to consider what level of prevention or response is available, and viable, under U.S. law and the rules of engagement, when a threat of an armed and violent incursion into southwestern sovereign U.S. territory by Mexican drug cartels increases. This paper will address the historical and current conditions that justify planning for this situation. Three different courses of action will be examined in light of what legal requirements and rules of engagement would apply, as well as what additions or modifications would be necessary. Finally, the best course of action will be chosen after comparing the strengths and weaknesses of all three options.

*Senator Lieberman: Is there a trigger in your mind now for what kind of escalation of violence from drug-related activities from Mexico would bring Northern Command more actively involved in this battle?*

*General Renuart: Senator, I think we've had the trigger. To use the example of the city of Juarez and Chihuahua Province in Mexico, 1700 drug-related murders in the last year. So that kind of violence that close to our border I think was the sounding horn, if you will, on the need for an integrated approach.<sup>1</sup>*

## INTRODUCTION

The increasing drug-related violence taking place in Mexico is a growing concern for a variety of stakeholders in the United States, from Congress to the residents of the Mexican border states. By way of contrast with Juarez and Chihuahua Province, the Federal Bureau of Investigation's first Preliminary Semiannual Uniform Crime Report for 2008 shows that the total number of murders in New York's six major cities was 299.<sup>2</sup> While significant on its own, it puts the death toll due to drug-related violence into a clear perspective. The Mexican drug cartels are demonstrating both a willingness and increasing capability to engage in violent and deadly acts against civilians and, alarmingly, armed Mexican forces. This situation presents a threat to the safety and security of the United States, and the Department of Defense (DOD) does indeed need to be more actively involved in this battle.

The purpose of this paper is to consider what actions would be viable to the DOD if the violence threatened by the Mexican cartels was targeted at the United States. Specifically, as the threat of an armed and violent incursion into southwestern sovereign U.S. territory by Mexican drug trafficking cartel foreign nationals increases, what level of prevention or response is available and viable under U.S. law and the rules of engagement.

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<sup>1</sup> General Victor E. Renuart, Jr., "Testimony," Senate, *Hearing to Receive Testimony on United States Southern Command, United States Northern Command, United States Africa Command, and United States Transportation Command*, 111th Cong., 1st sess., 2009, [http://armed-services.senate.gov/Transcripts/2009/03%20March/A%20Full%20Committee/09-09\\_3-17-09.pdf](http://armed-services.senate.gov/Transcripts/2009/03%20March/A%20Full%20Committee/09-09_3-17-09.pdf) (accessed 30 April 2009).

<sup>2</sup> Federal Bureau of Investigation, *Preliminary Semiannual Uniform Crime Report* (Washington, DC: Department of Justice, January 2009).

This paper will first address the conditions that justify planning for this situation, as well as who would likely be designed as the commander of such an operation. Second, the viability of three different Courses of Action (COA) will be examined by considering what legal requirements and rules of engagement would apply, and what additions or modifications would be necessary. Finally, this paper will conclude with the best COA being chosen and recommendations made for how to maximize its availability and viability.

This topic has been explored using unclassified and open-source material in an attempt to maximize usability and distribution options.

## **BACKGROUND**

Mexico provides the only entry point via land into the southern portion of the United States. Its border with the United States is approximately 3100 kilometers long, and touches the states of Arizona, New Mexico, Texas and California.<sup>3</sup> While patrolled and monitored by both Mexican and American law enforcement, this border serves as an entry point for an enormous amount of illegal drugs into the United States. In 2005, U.S. authorities manning the U.S. / Mexican land border seized over 222,000 kilograms of cocaine, 5500 kilograms of methamphetamine, and approximately 1.16 million kilograms of marijuana.<sup>4</sup> Mexico is considered the largest foreign supplier of marijuana and methamphetamine to the United States, and serves as "the primary transshipment country for US-bound cocaine from South America with an estimated 90% of annual cocaine movements toward the US stopping in Mexico."<sup>5</sup> These factors not only demonstrate how the Mexican drug cartels are "the greatest drug trafficking

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<sup>3</sup> Central Intelligence Agency, "The 2008 World Factbook: Mexico," <https://www.cia.gov/library/publications/the-world-factbook/print/mx.html> (accessed 1 May 2009).

<sup>4</sup> House Committee on Homeland Security, *A Line in the Sand: Confronting the Threat at the Southwest Border*, 109th Congress, 1st sess., 2006, 3.

<sup>5</sup> Central Intelligence Agency, "World Factbook: Mexico."

threat to the United States," but show why the use, maintenance and control of the land-based smuggling routes are such a valuable commodity to the Mexican drug cartels.<sup>6</sup>

Unfortunately, the cartels possess both the capabilities, and the will, to violently exert their influence over this area. One such capability are the cartels' communication resources. Through the use of technologies including satellite communications, encrypted messaging, scanner devices and high-frequency encrypted radios, the cartels have created a sophisticated command and control system used during cross-border operations.<sup>7</sup>

Weapons, both the quantity and ability to effectively use them, has become such a core competency for the cartels and their proxies that it has led some to question whether they are better networked, equipped, and financed than the combined Mexican and U.S. border forces opposing them.<sup>8</sup> Some members of Congress appear to hold this view, stating that not only is U.S. law enforcement being outmanned and outgunned on the border,<sup>9</sup> but that "Mexican drug cartels are more sophisticated and dangerous than any other organized criminal enterprise...The cartels operate along the border with military grade weapons, technology and intelligence and their own respective paramilitary enforcers."<sup>10</sup>

As mentioned previously, the cartels also possess the will to violently exert their influence over the borderlands between the U.S. and Mexico. Private armies have been created, composed of former Mexican special forces and police and even tapping into former Central

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<sup>6</sup> National Drug Intelligence Center, "National Drug Threat Assessment 2009," <http://www.usdoj.gov/ndic/pubs31/31379/dtos.htm#Top> (accessed 1 May 2009).

<sup>7</sup> Ibid.

<sup>8</sup> David J. Danelo, "The Border War," *Proceeding* 134, no. 10 (October 2008): 48-52.

<sup>9</sup> House Judiciary Committee Joint Hearing before the Subcommittee on Border Security, Immigration and Claims and the Subcommittee on Crime, Terrorism and Homeland Security, *Outgunned and Outmanned: Local Law Enforcement Confronts Violence Along the Southern Border*, 109th Cong., Sess. 2, March 2, 2006, [www.hsdl.org/homesec/docs/legis/nps03-052406-10.pdf&code=d2664b6364f601e7446d60362694349c](http://www.hsdl.org/homesec/docs/legis/nps03-052406-10.pdf&code=d2664b6364f601e7446d60362694349c) (accessed 1 May 2009).

<sup>10</sup> House Committee on Homeland Security, *A Line in the Sand: Confronting the Threat at the Southwest Border*, 109th Congress, 1st sess., 2006, 4-7.

American special forces.<sup>11</sup> The two main groups are the Gulf Cartel's Los Zetas, and the Sinaloa Cartel's Los Negros, both of whom use military tactics and military weapons (such as grenade launchers and large-caliber weapons) during confrontations.<sup>12</sup> It is likely that it was one of these groups which entered into the sovereign territory of the U.S. in 2006 driving military-styled vehicles, wearing Mexican army uniforms, heavily armed, and proceeded to prevent U.S. law enforcement from executing a seizure and arrest of contraband and smugglers.<sup>13</sup>

Both the capacity and the will exists for Mexican cartels not only to continue their smuggling operations, but to support such actions with powerful violence. Congress has noted its concern, as has the President, increasing resources and funding dedicated to the issue. A few examples include the President ordering the doubling of Border Security Task Force teams and Violent Criminal Alien teams, having the Drug Enforcement Agency allocate 29% of its domestic agents to the southwestern U.S. area, and directing the Department of Justice's Organized Drug Enforcement Task Forces Program to add personnel to their strike force capacity along the Southwest border.<sup>14</sup> This is in addition to increasing the current amount of surveillance, information sharing, training and equipping the DOD is engaged in with Mexican authorities.<sup>15</sup>

This, however, is not enough. The Mexican cartels' private armies, weapons, methods of operation and value of overland smuggling routes make it increasingly likely that they will attempt to enter the United States by simply shooting their way past the U.S. Border Patrol. The only organization capable of preventing, planning for, and countering such an action is the DOD.

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<sup>11</sup> Ibid., 11-14.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid., 5-6.

<sup>14</sup> Office of the Press Secretary. "Administration Officials Announce U.S.-Mexico Border Security Policy: A Comprehensive Response and Commitment," 24 March 2009, [http://www.whitehouse.gov/the\\_press\\_office/Administration-Officials-Announce-US-Mexico-Border-Security-Policy-A-Comprehensive-Response-and-Commitment/](http://www.whitehouse.gov/the_press_office/Administration-Officials-Announce-US-Mexico-Border-Security-Policy-A-Comprehensive-Response-and-Commitment/). (accessed 1 May 2009).

<sup>15</sup> Ibid.



Such use of the military is not without precedent. In addition to the current usage of military training, support, funding and equipping currently engaged in along the southwest border, the Army has a history of supporting the Border Patrol. In the 1930's and 1940's, the U.S. Army provided fire support for the Border Patrol whenever gunfights would erupt on both sides of the Mexican border.<sup>16</sup> Although it ended in tragedy, Joint Task Force 6 also conducted more than 3400 border security missions upon its creation in 1990.<sup>17</sup>

As part of their mission to conduct homeland defense and civil support to defend and protect the United States and its interests, specifically counter-drug operations, U.S. Northern Command (NORTHCOM) would likely be assigned the responsibility for preventing or responding to an armed and violent incursion onto U.S. territory by Mexican drug cartels.<sup>18</sup> As the chief coordinator and collaborator between NORTHCOM and a wide variety of federal civil law enforcement agencies (Customs and Border Patrol, Immigration and Customs Enforcement, U.S. Coast Guard, Federal Bureau of Investigation, etc.), Joint Task Force North (JTF North) would likely be tasked with the planning and response to the threat.<sup>19</sup> The following section next explores three options available to JTF North, approaching their legal and procedural viability through the rules of engagement.

## **COURSES OF ACTION**

Three COA's will be offered as potential solutions for the threat previously set out. Each of these COA's will include five distinct types of rules of engagement - approval authority,

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<sup>16</sup> David J. Danelo, "The Border War," 49.

<sup>17</sup> Ibid.

<sup>18</sup> United States Northern Command, "About USNORTHCOM," <http://www.northcom.mil/About/index.html> (accessed 1 May 2009).

<sup>19</sup> General Victor E. Renuart, Jr., "Testimony," *Hearing to Receive Testimony*, 12.

patrolling, targeting, force allowed, and weapons allowed. Finally, counterarguments and drawbacks will be discussed.

### **COA 1 - Patrol and Guard**

This COA focuses mainly on the use of military forces to actively patrol and conduct guard duty along the border. It is appropriate if the commander's intent is to emphasize the prevention aspect of the threat through supporting overtaxed U.S. law enforcement, making a show of force while minimize confrontation, and in the absence of enough intelligence to identify specific targets.

The approval authority for such a mission would likely need to come from the Secretary of Defense (SECDEF). Although NORTHCOM can delegate authority to act on a number of issues not withheld by the SECDEF, this COA would likely fall into too many categories which were withheld by SECDEF.<sup>20</sup> For example, military forces could be authorized at the NORTHCOM level to approach and challenge during field operations with U.S. law enforcement, so long as military forces were concentrating on specific zones where no imminent threat existed.<sup>21</sup> However, other rules of engagement requests will require higher authority.

In order to engage in patrols of the southwestern border area, the primary mission set of this COA, authority will need to be requested from the SECDEF level for the following rules of engagement. First, to allow specific DOD units to participate in counterdrug activities where an imminent threat exists, since patrolling has the meeting and interception of cartel forces as its ultimate goal.<sup>22</sup> Second, to allow specific DOD units to accompany civilian law enforcement

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<sup>20</sup> Chairman, U.S. Joint Chiefs of Staff, "DOD Counterdrug Support," CJCSI 3710.01B (Washington, DC: CJCS, 28 January 2008).

<sup>21</sup> Chairman, U.S. Joint Chiefs of Staff, "Standing Rules of Engagement/Standing Rules for the Use of Force for U.S. Forces" (U), CJCSI 3121.01B, Encl. O (Washington, DC: CJCS, 13 June 2005). (Secret) Information extracted is unclassified.

<sup>22</sup> Chairman, U.S. Joint Chiefs of Staff, CJCSI 3710.01B, 4.f.(4); Chairman, U.S. Joint Chiefs of Staff, CJCSI 3121.01B, Encl. O, 4.b. (Secret) Information extracted is unclassified.

officers, or provide support to them from outside a designated base of operations but within a specific zone of interest.<sup>23</sup> Third, to designate that the patrols would be composed of a mix of DOD forces and civilian law enforcement.<sup>24</sup> While this option puts some limits on the increased manpower DOD forces would bring, the benefits of such an arraignment allows law enforcement to operate under their authority for dealing with intercepted cartel operations, but makes use of the logistics and additional areas that can be covered by injecting DOD forces into the area.

Targeting rules of engagement should be limited, as the utility to this COA emphasizes presence over confrontation. Areas that should be targeted for DOD patrol use should be those involving the most risk of dangerous actions by the cartel operators. This would include known entry points for convoys, as well as known transportation routes for weapons.

A minimal amount of force should be authorized for this COA. DOD forces, as participants in counterdrug operations within U.S. territory, will follow the Standard Rules for the Use of Force.<sup>25</sup> Due to the battle space being within U.S. territory, warning shots should be prohibited, and deadly force should be restricted to only being used under the self-defense rules. Finally, weapons allowed should be limited to small arms for personal protection only, with riot control agents and crew-served weapons being specifically withheld.

There are a few notable risks and drawbacks to this COA. One argument is that the risk to DOD forces outweighs any potential gains their presence may foster. This risk is counter-balanced by the legal risk avoided by using DOD forces solely as patrol and guard forces. Although their utility may be decreased, so will the likelihood that the U.S. public would object to their use in such a manner. A second argument is that the prosecution of criminal cases against any intercepted cartel operators may suffer. Training and the proper integration of civil law

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<sup>23</sup> Chairman, U.S. Joint Chiefs of Staff, CJCSI 3710.01B, 1.b.(2).

<sup>24</sup> Chairman, U.S. Joint Chiefs of Staff, CJCSI 3121.01B, Encl. O, 4. (Secret) Information extracted is unclassified.

<sup>25</sup> Chairman, U.S. Joint Chiefs of Staff, CJCSI 3121.01B, Encl. H. (Secret) Information extracted is unclassified.

enforcement into the ranks of the DOD forces should satisfactorily reduce the possibility of evidentiary issues that may arise through the usage of DOD forces in such a manner, especially when most military security forces (a likely group to be used for such a mission) are trained and billeted as military police as well. A third argument concerns whether this is a task best performed by National Guard units operating under state authority. Considering that the threat is a multi-national, multi-state organization well-equipped and often composed of former foreign special forces personnel, the use of DOD forces with their reach-back, multi-jurisdictional authority and clear chain of command would be an appropriate counter to this argument.

### **COA 2 - Enforce law and arrest**

This COA focuses on using military forces to not only patrol, but to confront and take into custody suspected cartel members and drug smugglers along the southwestern border with Mexico. It is not only the most politically and legally complex option for the commander since its execution can be seen as either counter-drug operations or homeland defense, but it blurs the distinction between the traditional law enforcement responsibility of keeping the population safe from internal domestic dangers with the military responsibility of protecting the population from external aggression.<sup>26</sup> This would need to be seen as a case where criminal aggression merges with external aggression, increasing the need for military action to defend the sovereignty of the borders in addition to citizen safety.<sup>27</sup> However, this COA would be the most appropriate if the commander's intent was to move from purely prevention to a more active counter-drug or homeland defense phase, better intelligence is available, and the likelihood of a specific threat has increased. This is also true if the commander's desire is to limit the threat of cross-border

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<sup>26</sup> Bert B. Tussing, "New Requirements for a New Challenge: The Military's Role in Border Security," *Homeland Security Affairs* IV, no. 3 (October 2008), 1, <http://www.hsaj.org/?article=4.3.4> (accessed 2 May 2009).

<sup>27</sup> Ibid.

violent incursions by directly confronting as many cartel operatives as possible, with the goal of eventually prosecuting them for drug and immigration related crimes in U.S. court.

The approval authority for this COA, considering existing legal requirements, would likely rest with the President. This is due primarily to the language of what is known as the Posse Comitatus Act (PCA), a federal statute which states that "Whoever, except in cases...expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force...to execute the laws shall be fined under this title or imprisoned not more than two years, or both."<sup>28</sup> Federal courts appear split on whether the PCA applies to the Navy as written,<sup>29</sup> although the DOD has expressly ordered it followed by all member services.<sup>30</sup> Specifically, military forces supporting civilian law enforcement are barred from engaging in searches, seizures or making arrests unless specifically authorized by law.<sup>31</sup>

The President, in order to authorize DOD forces to engage in search and seizures under this COA, would have to execute his authority granted to him by Congress under the Insurrection Act (IA). The IA states that the President can use the military to enforce the law so long as (1) the crisis exists in a State, (2) the President determines that domestic violence has overwhelmed state authorities, and (3) the violence present prevents the execution of the law, deprives citizens of any right or protection, and the state civilian authorities are unable to alter the situation.<sup>32</sup> The threat of a violent incursion by Mexican drug cartels into sovereign U.S. territory would arguably pass this test.

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<sup>28</sup> *Use of Army and Air Force as Posse Comitatus*, U.S. Code, Vol. 18, sec. 1385 (2007).

<sup>29</sup> *United States v. Kahn*, in *Federal Reporter*, 3rd series, vol. 35 (9th U.S. Circuit Court of Appeals, 1994), 431; *United States v. Yunis*, in *Federal Reporter*, 2nd series, vol. 924 (U.S. District of Columbia Circuit Court, 1991), 1093.

<sup>30</sup> Department of Defense, *DOD Cooperation with Civilian Law Enforcement Officials*, Department of Defense Directive (DODDIR) 5525.5 (Washington, DC: DOD, 20 December 1989).

<sup>31</sup> *Ibid*; see also *Restriction on Direct Participation by Military Personnel*, U.S. Code, Vol. 10, sec. 375 (2008).

<sup>32</sup> *Major Public Emergencies; Interference with State and Federal Law*, U.S. Code, vol. 10, sec. 333 (2008).

First, the crisis involves and would take place in the four states bordering on Mexico. Second, the President, under his own authority and likely without any subsequent judicial review, would be able to find that the violence brought about by such a well-armed, well-trained cartel operation would quickly overrun any law enforcement resistance met.<sup>33</sup> Lastly, such violent entry into the U.S. would violate drug and immigration laws, put U.S. citizens at risk of serious bodily harm or death, and likely occur so rapidly and forcefully that the state authorities would not be able to respond adequately or quickly enough.

It is important to note that there is precedent for such action. Under President Lincoln, the U.S. Supreme Court held that during actual hostilities outside of a formal war, the President had the sole authority to determine if an emergency existed that required war-type measures, what measures to use, and when the emergency would terminate.<sup>34</sup> In addition, since the President's authority under the IA was authorized by an act of Congress, such actions would not violate the PCA.

Assuming the President authorizes this COA under the IA, the next decision will be whether to proceed as a counterdrug action or as strictly a homeland defense action. If this remains a counterdrug action, specific SECDEF authorization will be needed to authorize the interdiction of a vehicle, search or seizure, arrest or apprehension, and use of military forces as surveillance or pursuit.<sup>35</sup> If the commander decides to shift this to a homeland defense-based mission, the governing rules of engagement would shift from counterdrug specific guidance to Enclosure N of CJCSI 3121.01B, "Land Contingency and Security-Related Operations within

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<sup>33</sup> Tom A. Gizzo & Tama S. Monoson, "A Call to Arms: The PCA and the Use of the Military in the Struggle Against International Terrorism," *Pace International Law Review* 15, (2003): 157.

<sup>34</sup> Christopher Ligatti, "The Legacy of American Military Troops Engaging in Domestic Law Enforcement in the Event of a Major Terrorist Attack," *New England Law Review* 41, (2006-2007): 225.

<sup>35</sup> DOD, DODDIR 5525.5, E4.1.3.

U.S. Territory." This can be justified by showing that a threat involving a violent entry into the U.S. by a non-state actor meets or exceeds the official definition of "homeland defense."<sup>36</sup>

If the mission remains focused on counterdrug operations, then SECDEF approval will be needed to change two key rules of engagement regarding patrolling. First, specific DOD units should be allowed to participate in CD activities where an imminent threat exists, since direct actions such as arrests and searches are inherently dangerous under this environment.<sup>37</sup> Second, specific DOD units should be explicitly allowed to accompany civilian law enforcement or operate outside a designated base of operations in order to conduct searches and seizures.<sup>38</sup>

However, if the mission shifts to operating as a homeland defense measure, existing rules of engagement would allow military forces to temporarily detain individuals pending the arrival of law enforcement, so long as the U.S. border with Mexico is designated as an established perimeter.<sup>39</sup> The existing rules would also allow individuals, property and vehicles to be searched to ensure the safety and security of DOD forces present.<sup>40</sup> However, SECDEF authorization will be required to modify the rules of engagement to allow increased contact with civilians.<sup>41</sup>

Targeting rules of engagement must limit DOD search, seizure, and arrest authority to non-U.S. personnel only, regardless of whether the mission was counterdrug or homeland defense. Under counterdrug operations, targeting should be limited to solid intelligence indicators provided by civilian law enforcement. For homeland defense, the targeting should

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<sup>36</sup> Department of Defense, *Strategy for Homeland Defense and Civil Support* (Washington, DC: DOD, June 2005), 5.

<sup>37</sup> Chairman, U.S. Joint Chiefs of Staff, CJCSI 3121.01B, Encl. O, 4.b. (Secret) Information extracted is unclassified.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid., Encl. N, 4.b.i. (Secret) Information extracted is unclassified.

<sup>40</sup> Ibid., Encl. N, 4.b.iii. (Secret) Information extracted is unclassified.

<sup>41</sup> Ibid., Encl. N, 4.g. (Secret) Information extracted is unclassified.

include specific routes, vehicle types, and nationalities based upon profiles done by civilian law enforcement.

Counterdrug operations would limit the use of force to standard rules for the use of force.<sup>42</sup> No warning shots would be authorized given the nature of the mission, and deadly force would only be allowed if used in self-defense. Weapons issued would still be limited to personal defense weapons.

Homeland defense rules of engagement would allow NORTHCOM, with SECDEF approval, to modify the use of force rules by specific request.<sup>43</sup> Such requests should include specific escalating force requirements to ensure against accidental force being applied to innocent parties, ranging from warnings to the actual use of deadly force. While deadly force would only be authorized as self-defense,<sup>44</sup> warning shots are authorized at vehicles that pose an imminent threat of death or serious bodily harm to DOD forces.<sup>45</sup> In addition, weapons requested should include limited riot control agents as well as crew-serve weapons due to increased threat due to increased interaction.

This COA presents a large number of problems with its institution and implementation, given it would be implemented as part of an anticipatory (as opposed to responsive) action to the threat of armed incursion by Mexican cartels. It requires the President's use of the IA to make it a legal option. This action would not only be difficult to achieve, but would be questioned at a variety of levels. Court actions could be filed arguing that the IA is overridden by the PCA, claiming the IA is subservient to the PCA due to being less recent, or arguing that the existence

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<sup>42</sup> Ibid., Encl. H.

<sup>43</sup> Ibid., Encl. L, 3.a.

<sup>44</sup> Ibid., Encl. L.

<sup>45</sup> Ibid., Encl. L, 4.d.



of other, more specific federal statutes regarding threats to national safety and security show Congress intended to keep the IA from becoming all-encompassing.<sup>46</sup>

The military itself would likely object, whether it was due to a potentially slippery slope of civilian authorities depending more and more on military assistance for civilian matters, or because of increased exposure to risk and reduced readiness for full-scale combat operations.<sup>47</sup> Congress and the population at large would likely see this action as an erosion of civilian control over the military. Finally, the current head of NORTHCOM has left little doubt as to his feelings on the matter, clearly stating that "no active duty (is) doing police work."<sup>48</sup>

In light of all these potential arguments, it is likely this COA would not present a workable option to dealing with the Mexican cartel threat.

### **COA 3 - Defensive Engagement**

This COA would provide for the use of federal forces to target and attack cartel operations along the southwestern border with Mexico with the goal of neutralizing the cartel operatives. It is the most violent COA offered, and would require a determination that U.S. operations had fully shifted from a counter-drug policy to strictly homeland defense. This would be appropriate if a heavily armed cartel group crossed the U.S./Mexican border to transport drugs or personnel into the United States, as this is clearly an attack by an entity from outside the country which the President would be able to use military forces in response.<sup>49</sup> The commander's intent would need to be focused solely on response and defense to specific instances of cross-

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<sup>46</sup> Ligatti, "Legacy of American Military Troops," 212-214.

<sup>47</sup> Ibid., 235-239.

<sup>48</sup> General Victor E. Renuart, Jr., Commander, U.S. Northern Command (address, Naval War College, Newport, RI, 24 April 2009).

<sup>49</sup> Jerome R. Corsi, "General would deploy troops on U.S. soil," WorldNetDaily, 16 November 2007, <http://www.worldnetdaily.com/index.php?pageId=44559> (accessed 2 May 2009).

border violence, as the deterrence element would only exist once word reached the cartels that the U.S. military was now attacking those who force their way across the border.

Similar to COA 2, approval authority would ultimately rest with the President. The President's designation as Commander-in-Chief and its vesting of all executive power and duty to execute the laws give the President broad constitutional authority to use DOD forces to respond to threats to the nation's security.<sup>50</sup> The Constitution could even be read to require such action, as the federal government is tasked with guaranteeing "every state in this union a republican form of government, and shall protect each of them against invasion..."<sup>51</sup>

The rules of engagement should not allow patrolling at all. While this could be allowed under the pre-existing rules of engagement, it would vastly increase the risk of ill effects by this COA.<sup>52</sup> Instead, a specific force should be used as a fast reaction team and allowed to operate only when an appropriate target has appeared.

Targeting rules of engagement are the primary focus of this COA. Restrictions would need to be placed on what types of forces and training requirements are allowable, as well as specific requirements for designating a foreign vehicle or group of personnel as a viable target. Targets would need supportable intelligence showing that they were composed of non-U.S. persons, originating in Mexico, within U.S. territory when intercepted, and likely to possess significant weapons capacity. Alternatively, if the group were identified to be affiliated with either Los Negros or Los Zetas, most of these targeting conditions would likely be met.

The authority to use deadly force should be authorized under the rules of engagement, as the commander's intent of this COA is to terminate the threat instead of arrest and prosecute it.

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<sup>50</sup> Department of Justice, "The President's Constitutional Authority to Conduct Military Operations Against Terrorists and Nations Supporting Them," <http://www.usdoj.gov/olc/warpowers925.htm> (accessed 2 May 2009).

<sup>51</sup> U.S. Constitution, Art. IV, sec. 4, [http://www.archives.gov/exhibits/charters/constitution\\_transcript.html](http://www.archives.gov/exhibits/charters/constitution_transcript.html) (accessed 2 May 2009).

<sup>52</sup> Chairman, U.S. Joint Chiefs of Staff, CJCSI 3121.01B, Encl. N. (Secret) Information extracted is unclassified.

SECDEF would need to authorize an augmentation to the rules for the use of force.<sup>53</sup> The weapons requested for use would be crew-serve weapons appropriate to a vehicle-borne threat, such as heavy machine-guns, but no rockets or artillery.

As this COA approaches the risk from the viewpoint of an attack directly upon U.S. sovereign soil, it involves all the risks inherent in a military operation within U.S. territory. In addition, its utility could be limited due to the frugality in which such an option would be used, as the commander should not launch an attack upon a cartel operation unless the intelligence is fairly good. There would also be a substantial risk that an innocent civilian might be injured in such an operation.

While these are all substantial risks to this COA, one of its main advantages lies in the deterrence potential. Once word reaches the cartels that the U.S. now has a fast-reaction military force specifically designated to destroy a violent incursion into the U.S., they may be substantially dissuaded from making the attempt. Additionally, the rules of engagement would only allow an operation by DOD forces if the intelligence was substantial, which would by definition reduce the likelihood of damage and danger to unintended individuals.

## **CONCLUSIONS & RECOMMENDATIONS**

The first COA, patrol and guard, would politically be the safest option, and present the minimum risk of unintended consequences due to military actions. However, it would forfeit the initiative to the cartels, minimize the use of military core capabilities, and increase the command and control issues already present in such a multi-agency undertaking.

The second COA, law enforcement and arrest activities, would serve to boost law enforcement efforts by substantially increasing the amount of federal forces able to search for

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<sup>53</sup> Ibid., Encl. L, 3.a.

contraband and arrest offenders. While more resources and personnel would certainly reduce the effectiveness of current drug smuggling operations, as well as make for a much better armed and trained force to meet the threat of armed border incursion, the legal issues surrounding such a use are substantial. Almost every major organization in the federal government would have a stake in the operation, and the President himself would have to authorize actions. Legal objections would likely delay implementation for months or even years, if indeed the federal courts ruled in favor of the President's use of the PCA. Even though this COA maximizes utility and force composition, the legal issues it raises make it impracticable.

Therefore, of the three COA's presented, the one most likely to protect the U.S. from this threat while minimizing the inherent risk is COA 3, planning and preparation for a defensive engagement. Any military action would be tightly focused and based upon firm intelligence analysis, removing most of the requirements for COA 1. The actions would be justified under the President's authority to protect the U.S. from outside attack, avoiding the legal complications of COA 2. The DOD would be operating within its area of responsibility. Finally, there is the potential that the creation of this capacity, along with the stated willingness to use it, would be enough to deter the Mexican cartels from even making the attempt to forcefully enter the U.S. across the land border.

The threat to the safety and security of U.S. sovereignty and citizenry is present and growing in Mexico. This threat has been recognized in varying degrees by the President, Congress, and NORTHCOM. Drug cartels are expanding their violence beyond our borders, and both the capability and benefit of using these tactics to expand their influence in the U.S. is increasing. A plan must be created to address this threat, and the preparation for a defensive engagement is the best possible option politically, legally, and practically.

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